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use of the writ of *mandamus*. But the court cannot concur in this view. In the one case the writ is asked to compel the chief of police to submit to the authority of the board of commissioners, and to deliver up to them certain property to which, by force of the statute, they are entitled; and in the other case the intervention of this court is sought to require the city treasurer to honor the drafts of the commissioners, in obedience to the same law. In such case the application is to this court for its prerogative writ to constrain a public officer to discharge a duty incident to his office, which is in no degree discretionary, and for the breach of which there is no other specific or adequate remedy. Each case appears to come clearly within the office of the *mandamus*: 8 Mod. 28; Bac. Abr. tit. *Man. C. D.*; *Rex v. Buller*, 8 East 388; *Rex v. Gravesend*, 2 B. & C. 602.

Let the writs issue according to the application.

Circuit Court of the United States. Fourth Circuit, District of Maryland.

OWNERS OF THE MARY WASHINGTON v. AYRES *et al.*

The duty of a carrier by water is not fulfilled by simple transportation from port to port. The goods must be landed and the consignee notified of their arrival.

Where goods were landed from a vessel and stored in the carrier's storehouse until the consignee should call for them, but no notice of their arrival was given him, proof that such was the carrier's general custom will not relieve him from liability for damage to the goods after such storage, unless there is proof of agreement by the owners to such arrangement.

A contract of affreightment to be performed upon tidal waters or navigable rivers wholly within the limits of a state, is a maritime contract within the admiralty jurisdiction of the courts of the United States.

APPEAL from the District Court in Admiralty.

The appellants, who were respondents below, agreed with the appellees, who were libellants, for certain compensation which was paid, to convey on their steamer certain merchandise from Baltimore to Hill's Landing, on the Patuxent river, and to deliver it there to Pumphrey. The merchandise was accordingly conveyed to respondents' wharf, at Hill's Landing, and Pumphrey not being there to receive it, was placed in their warehouse connected with the wharf. This warehouse was kept for the accom-

modation of the carrying trade in which the steamer was employed. Goods landed for delivery were temporarily placed in it when immediate and direct delivery was impracticable or inconvenient ; and goods received for shipment were in like manner accommodated, when immediate shipment could not be made. No charge was made for the accommodation. It was an incident to the trade, and paid for in the freight. The goods in the present case were damaged after being stored in this warehouse.

The judgment of the District Court was for the libellants ; whereupon the respondents appealed to this court.

William Pinkney Whyte, for libellants.

P. W. Crain and *Wm. M. Addison*, for respondents.

The opinion of the court was delivered by

CHASE, C. J.—Under the circumstances of this case I think that the contract of affreightment bound the carriers not only to carry the merchandise to the landing, but to deliver it to Pumphrey, or excuse non-delivery by proof of equivalent action or waiver. The duty of a carrier by water is not fulfilled by simple transportation from port to port. The goods must be delivered, or at least landed, and a reasonable opportunity given to the consignee of ascertaining their condition. In order that opportunity for inspection and for the removal of the goods may be given, the consignee must be notified of the arrival of the goods. This is the general rule. If exceptions are made by usage, circumstances, or special arrangements, they must be shown by proof.

In the present case the respondents allege that it was not their practice to give notice to consignees, but instead of giving such notice, to deposit goods in their warehouse, where the consignees were expected to call for them, on learning from their correspondents, or otherwise, of their arrival. They insist that this arrangement was for the benefit of the owners of the goods, and was understood and agreed to by them. The evidence does not sustain this claim. It shows, clearly enough, the practice of the respondents ; but it does not show any understanding, on the part of the owners of the goods, that the respondents were to be relieved from their responsibility as carriers until its actual delivery, or its equivalent deposit in their warehouse, with information conveyed to the owners, in some way, that their goods had arrived. The warehouse arrangement was rather for the con-

venience of the carriers than of freighters or consignees. The storage, with information of arrival, however obtained, may be regarded properly enough as a substitute for actual and direct notice, and it may be admitted that opportunity for removal, after such information, would discharge the carriers from responsibility as such, in the same manner as actual notice and like opportunity. But to hold that mere deposit in their own warehouse, under the circumstances of this case, terminated their special responsibility, would be a dangerous relaxation of the salutary rule on which the security of commerce so largely depends.

It is clear, from the proof, that the merchandise was damaged after the landing, and while in the custody of respondents, before Pumphrey had information of its arrival, or opportunity to take it away. It seems, however, that the merchandise was not ordered from the libellants by Pumphrey, and that he declined to receive it, and it is alleged that the carriers, therefore, were not liable. And there was proof that no order for the merchandise was actually given, and that Pumphrey, on learning its condition, refused to have anything to do with it. But it is not easy to perceive the importance of this circumstance. It is plain enough that the libellants acted in good faith upon an expectation founded on a conversation with Pumphrey, that he would like to have the merchandise sent to him, and that he would receive and pay for it, if of good quality and in good condition, and the proofs show that this expectation was warranted. Whether warranted or not, the duty of the carriers was in no way affected. Their obligation, both to shippers and consignees, was to convey and deliver, or at least offer to deliver safely. It is true that after Pumphrey had information of arrival, and declined to receive the merchandise because of its bad condition, the respondents could not be held responsible as carriers, to the libellants, for subsequent injuries in the warehouse; but their responsibility for prior injuries was not changed, and it is that responsibility only which is now in controversy.

In the present case the question whether the respondents were liable as common carriers or as warehousemen is of little importance, except as a question of jurisdiction. The proof shows a degree of negligence which would make them liable in either character. But if their liability were as warehousemen only, they would not be responsible in this court. A court of the Union

has in general no jurisdiction of suits against warehousemen by citizens of the same state. Remedies for violation of these contracts must be sought by their co-citizens in state courts.

It is not questioned, however, that the judicial power of the United States extends to all cases of admiralty and maritime jurisdiction. This is a provision of the National Constitution. Nor is it questioned that this whole jurisdiction is vested by law in the District Courts of the United States, and on appeal in the Circuit Courts. This was expressly enacted by Congress in 1789. Nor is it questioned that a contract of affreightment, to be performed by traversing tide-waters, or other navigable waters, is in general a maritime contract, or that a suit upon such a contract makes a case of admiralty jurisdiction. This is settled by repeated decisions. But it is insisted that the contract of affreightment in this case was to be performed wholly within the state of Maryland, and that this case, therefore, having arisen from an alleged breach of it, is not within the admiralty jurisdiction. Upon this I remark, in the first place, that there is nothing in the nature or history of admiralty jurisdiction which excludes from its cognisance contracts to be performed within the country or state in which it is exercised. On the contrary, such contracts, if maritime in their character, were constantly held before the organization of the Union to be proper subjects of that jurisdiction.

Within a comparatively recent period, however, doubts have been expressed whether such contracts can be enforced by national courts sitting in admiralty. Such doubts were expressed in 1848 by Justice NELSON, speaking for a majority of the justices of the Supreme Court of the United States in the case of *The New Jersey Steam Navigation Company v. The Merchants' Bank*, 6 How. 392. They were founded on the assumption that "the exclusive jurisdiction in admiralty cases was conferred on the National Government as closely connected with the grant of commercial power," and were cautiously stated as follows: "It is a maritime court, instituted for the purpose of administering the law of the seas. There seems to be ground, therefore, for restraining its jurisdiction, in some measure, within the limit of the commercial power, which would confine it, in cases of contracts, to those concerning the navigation and trade of the country upon the high seas and tide-waters with foreign countries, and among the several states. Contracts growing out of the purely internal

commerce of the state, as well as commerce beyond tide-waters, are generally domestic in their origin and operation, and could scarcely have been intended to be drawn within the cognisance of the Federal courts."

The principle thus intimated rather than asserted was applied ten years later in the case of *Allen v. Newberry*, 21 How. 244, to a contract of affreightment to be performed on Lake Michigan, between two ports in Wisconsin; but the decision against the jurisdiction over the contract was placed quite as much upon the Act of Congress of February 26th 1845, which restricts admiralty jurisdiction on the lakes and interior navigable waters to contracts relating to vessels employed between ports in the different states, as upon the more general restriction derived from the limitation of the commercial power.

It cannot escape observation that this denial of jurisdiction to the national courts of affreightment-contracts to be performed between ports of the same state, but on navigable waters where, in cases of *tort*, the admiralty jurisdiction is undoubted, rests wholly upon the assumption that the restriction upon the commercial power operates as a constitutional limitation of the jurisdiction in admiralty over contracts.

Now, without more than a mere reference to the difficulty of assigning a reason for such a limitation of that jurisdiction in matters of contract which would not require the like limitation in matters of *tort*, and to the admitted doctrine that in matters of *tort* no such limitation exists, it is proper to observe that it has been more than once distinctly denied by the Supreme Court that any inference whatever in respect to the jurisdiction in admiralty can be drawn from the constitutional provision concerning commerce. Thus in the case of *The Genesee Chief*, 12 How. 452, the late Chief Justice, speaking for the court, and speaking with special reference to admiralty jurisdiction, said: "Nor can the jurisdiction of the courts of the United States be made to depend on regulations of commerce. They are entirely distinct things, having no necessary connection with one another, and are conferred in the constitution by separate and distinct grants."

So, too, in the case of *The Propeller Commerce*, 1 Black 578, in 1861, the Supreme Court, noticing an objection to its jurisdiction on the ground that it did not appear that the propeller was engaged in foreign commerce, or in commerce between the states,

and speaking through Justice CLIFFORD, said: "Admiralty jurisdiction was conferred upon the Government of the United States by the constitution, and in cases of *tort* is wholly unaffected by the considerations suggested in the proposition."

This is the latest judgment of the Supreme Court, and unless it can be shown that jurisdiction in matters of contract is not as "wholly unaffected by the considerations" referred to, as jurisdiction in matters of *tort*, it seems to be my duty, being fully satisfied that this court has jurisdiction under the constitution and the law over the contract of the respondents, to award to the libellants that justice to which the proofs clearly entitle them, without turning them out of this and requiring them to resort to another court. I do not think this can be shown, and therefore

Affirm the decree of the District Court.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF NEW HAMPSHIRE.¹

ADMINISTRATOR.

Right to Administration.—Where two persons are of the same relationship to the deceased, and one resides in this state and the other does not, ordinarily the one resident here is entitled to administration, as of right; but if he makes a claim against the estate which is contested by the heirs, it is proper, within the discretion of the court, to appoint the one residing out of the state: *Pickering v. Pendexter*, Sup. Court N. H.

ASSUMPSIT.

Assignment of Claim for Services.—Where A. had hired his son to B. for a given time and at a fixed price, and before the time had expired he gave an order on B. to pay to C. the amount then due or which might become due thereafter for his son's wages, which order was accepted by B., *Held*, that after said term of service had expired and the contract had been fully performed by A., C. might maintain an action for money had and received, against B., for the amount agreed to be paid for such labor: *Kent v. Watson*, Sup. Court N. H.

And if C. should sell this order to a third person, before or after suit brought upon it, the action might still be maintained in the name of C., by his consent, for the benefit of the real owner: *Id.*

¹ We are indebted for these notes to the courtesy of the judges. The volume of reports in which the cases will appear cannot yet be indicated.